crc

CALIFORNIA REINVESTMENT COALITION

August 10, 2010

Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Jennifer J Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

RE: Docket ID OCC-2010-0011, R-1386, RIN 3064-AD60

Dear Sir and Madam:

The following are the comments of the California Reinvestment Coalition (CRC) on the agencies' hearings to review aspects of Community Reinvestment Act (CRA) regulations and how the agencies should revise them to better serve the goals of CRA and the needs of under-served communities. These revisions are particularly important because the agencies' lack of regulatory oversight has some responsibility for financial institutions' irresponsible leading which lead to the current economic crisis as well as the current lack of bank responsiveness to low-income communities and communities of color.

The California Reinvestment Coalition is a statewide membership organization of more than 280 nonprofit organizations and public agencies. Our goal is economic vitality for all California communities through fair and equal access to financial institutions. CRC has been working for more than two decades with major financial institutions to promote lending, investment and services to low-income communities and communities of color. The Community Reinvestment Act has proved crucial in community efforts to further open the doors of financial institutions. CRC members meet several times annually with top executives of the major banks to discuss their lending, investment and services. These meetings would have been unlikely to occur without the CRA reminding bankers that all neighborhoods should be served.

CRC members also meet with federal and state regulators both at a regional level and in Washington, D.C. In such meetings for most of this decade, CRC has communicated to

474 Valencia Street, Suite 230 San Francisco, California 94103 tel 415.864.3980 fax 415.864.3981 www.calreinvest.org

all your agencies and others the dangers that its members were seeing in their communities and that was identified by our research. Despite consistent warnings to your agencies and others, dangerous and predatory lending by regulated and potentially regulated financial institutions occurred on a massive level. That lending contributed to and exacerbated the current national financial crisis. It is critical that your agencies attend carefully to the testimony and written comments of community-based organizations and leaders to avoid future economic crises. The comments that follow are focused toward those issues balancing the safety and soundness of corporations with our country's need for safe financial access for all communities. To put it succinctly, CRC is now concerned that your agencies' caution about lending and investment is currently allowing a rebirth of redlining by financial institutions that have little concern or care about communities of color or low-income communities.

The Community Reinvestment Act has promoted fair and equitable access to financial services for more than three decades. CRA has protected many households from the foreclosure crisis by requiring safe and sound lending. It opened the doors of banks to many people and communities who were previously redlined and excluded. It has supported economic vitality for all communities. CRA has meant sound products that were offered to under-served communities and people as a result of interaction promoted by the CRA and facilitated by community-based organizations. At the same time, the structure of the financial sector has changed dramatically since 1977 and CRA has a number of elements that should be modernized to meet the current environment.

The basis of CRA is both financial equality and public responsibility based in deposit insurance and positive public policy. CRC believes this responsibility is dramatically heightened now and into the future as the economic crisis was precipitated in great measure by irresponsible financial institution behavior. In addition, innumerable financial institutions were propped up by taxpayer funds in a number of ways. Financial institutions therefore have an increased level of public responsibility.

The California Reinvestment Coalition appreciates the opportunity to address issues relating to the Community Reinvestment Act with the federal financial regulators. The need and potential for significant changes in the CRA regulations to improve access for communities does not mitigate the need for significant statutory reform as well. There are a number of key components that cannot be changed without legislation. The comments that follow mirror the sequence of topics in the agencies' announcement of the four CRA public hearings.

Geographic Coverage

The growth of financial institutions and their operations beyond state boundaries and local branch locations has caused a disconnect between profit-making and deposit-taking activities on the one hand and CRA assessment areas on the other. This has meant that banks could have as little as one branch and thereby an assessment area as small as or smaller than a county but lend for profit and take deposits across all fifty states. An example of this is Schwab Bank that takes in a high proportion of its deposits from California but until recently had no CRA activities in our state. In addition, some large banks do very little CRA activity in assessment areas that are not metropolitan claiming that these are "not CRA lending or investment areas." This is evident across the CRA spectrum from insignificant lending and investment to "services" being provided by the white phone on the wall of the branch rather than bank staff.

The California Reinvestment Coalition would therefore propose the following approaches to the questions raised under geographic coverage.

- CRA responsibility should follow where the financial institution makes profit or takes deposits. If a bank makes a profit from lending or investment that is a significant portion of the market in a county or geographic area or takes a significant share of the deposits in that area, it should have a CRA responsibility to that geographic area. This must be particularly the case for financial institutions with one or few branches that do the majority of its lending, investments and deposit-taking outside the branch assessment area. Such responsibility should be proportional to the bank's overall operations. The agencies should evaluate it on that basis.

  At one time, Countrywide Bank may have been the most glaring example of the inappropriateness of all CRA responsibility being assigned to the area around one branch. Countrywide was the largest mortgage lender in the United States. Their bank in Virginia was the one location where they had CRA responsibility. Yet, their mortgage offices had signage for Countrywide Bank and they took deposits at those offices.
- For larger retail banks wherein the majority of their activity is in their assessment areas, the primary CRA responsibility should be to its customers and neighborhoods in its branch areas. For these large retail banks, customers and neighborhood needs must be weighed most heavily. Again, such responsibility should be proportional to the bank's overall operations.
- The CRA responsibility of a financial institution should extend to all its assessment areas whether they are metropolitan or not. Non-metropolitan and rural areas are too often under-served as a result of neglect by mega-banks toward low-income communities or communities of color in those areas. Regulatory sampling that has ignored non-metropolitan areas must change to include them. CRC does not agree that sampling is a valid methodology to evaluate CRA activities and the lack of evaluation of non-metropolitan or rural areas underlined the inadequacy of this approach. If the bank is too large to fully evaluate, perhaps it presents systemic risk.

<u>CRA performance tests, asset thresholds and designations</u>

CRA's goal is equal access for all those in assessment areas. Banks should be evaluated on how closely the bank approaches equality in its lending, investments and services proportional to population demographics. This should be viewed both qualitatively and quantitatively.

- Qualitatively: Is the bank offering products that serve low-income people and people of color? Too many times, the bank offers one size-fits-all products that may work for middle income people but not for the circumstances of those with less income or different financial or cultural circumstances. While the bank may assert that these other products are not profitable, in most cases there has been no attempt to create such a product even as a pilot. CRA creates an affirmative obligation to meet customer and neighborhood needs in a productive manner that may take a real effort and focus on the part of a bank that will not be present without regulatory pressure. Examples of this disparate impact range from consumer products to loans for multifamily affordable housing. Wells Fargo and US Banks offer payday loans to their customers
- Quantitatively: Does the proportion of lending or services or investments to low-income people and communities match the proportion of the population represented by these communities? Lending to small businesses (revenues less than $1 million annually) in low-income census tracts should be the same proportion of all loans as the proportion of those businesses in those areas compared to all such businesses in the assessment area. In other words, if small businesses in LMI areas are 28 percent of all businesses, loans to such businesses should represent 28 percent or more of the bank's lending.
- Sampling: The growth of financial institutions has made it more difficult for regulatory agencies to keep up with their geographic breadth and product spread. The agencies have taken a troubling approach to this by sampling at the same intervals at which they formerly tested a smaller bank. The sampling seems more often to focus on major metropolitan areas which means that non-metropolitan areas do not get a focus. Banks thereby do less in non-metropolitan areas. Banks need to be evaluated and examined on the operations of the entire bank across its entire footprint.
- Community Contacts: This is a critical element of any evaluation: how did the entity being evaluated impact its customers? Unfortunately, CRC members report only rare contact from any of the regulatory agencies. CRC once had a meeting with top OCC executives in Washington, D.C., where an impromptu question to the dozen or so community leaders in the room regarding whether they had ever been contacted by an examiner from any of the agency got a resounding "never" as the answer. Community input is critical to evaluation on CRA performance and it has been lacking.
- Branches: Access to services is a critical piece of any corporate evaluation. Bank branches are not located in an equitable fashion across income areas. Branch managers are evaluated on their service and product sales in their assessment area. Banks should be evaluated on the proportion of their branches that are in low-income census tracts and census tracts of color relative to all areas.
- Race: It is clear from every study that color prejudice is alive and well. CRA examinations must include an evaluation of disparate impact that is strong and transparent. It has also been clear that CRA oversight has limited predatory lending and is therefore critical to protecting these neighborhoods from predators.

The understanding and involvement of community organizations and people is critical to the responsiveness of a financial institution under CRA and to neighborhoods. Many community organizations have negotiated CRA commitments or agreements with banks that are not being honored by acquiring corporations. A recent report from the California Small Business Task Force convened by the Federal Reserve Bank of San Francisco states as a recommendation: "require any acquirer of a regulation financial institution to agree to honor any existing publicly-announced community reinvestment agreement or plans from the institution it acquires." CRC regards this as a minimum standard. It is a great disservice and disappointment for under-served communities that so many mergers have occurred in the middle of night with midwifery by the regulators and no public comment or input.

Affiliate Activities

The agencies should consider all affiliate activities for examination under CRA. Financial corporations have organized their corporate structure in a manner that puts normal banking activities (lending, investment, services) under affiliates where they have not been overseen or examined in the past. Some affiliates were major predatory lenders that played a major role in the housing crisis. If they had been regulated, their harmful lending would have been much less likely. All affiliates and subsidiaries should be regulated and examined along with the bank.

All affiliates that do banking activities should be overseen under CRA. Their activities should be included in the responsibilities of the "bank" for CRA purposes relating to overall assessment areas and examination. It is beyond inappropriate that financial institutions have been able to decide which affiliates will be examined by the regulators and has meant that much unsafe, unsound and predatory lending has taken place.

Impact of Data

CRA occurred because community groups in Chicago collected data that showed redlining on home lending. This led Senator Proxmire to include it in the 1977 Housing Act.

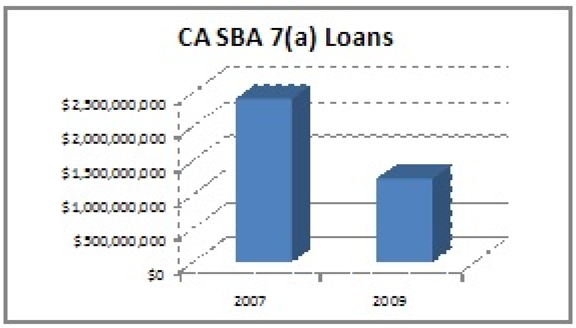
The ground breaking 1993 study of home mortgage lending by the Federal Reserve Bank of Boston laid bare continuing mortgage lending redlining for the world to see. It began a period of more access to mortgage loans for people of color and low-income people. These were prime loans made carefully but more responsively by financial institutions.

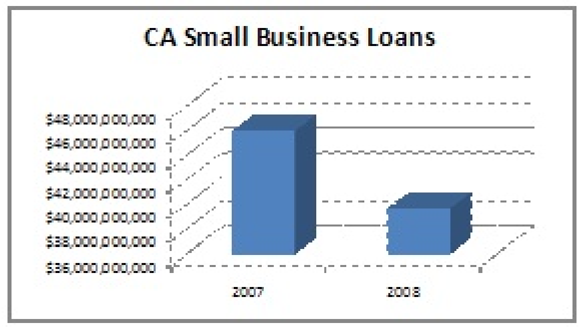
The same opportunity is possible for small business and consumers with increased public data and Federal Reserve Bank studies that illuminate barriers to access to credit. This is a major goal of CRC and other community organizations: financial democracy.

Small business lending evaluation and data

California is experiencing a devastating and growing economic crisis. The state is seeing small businesses close, long-term workers lose their jobs, families lose their homes, and broad negative social impact. The difficult straits of California's small businesses are a critical piece of this economic crisis and high unemployment that is only now beginning to receive attention. CRA evaluation and data collection can make a difference in promoting lending by financial institutions to small, minority-owned and women-owned institutions, particularly those in low-income communities.

California's thousands of small businesses are suffocating because of their lack of access to bank credit. Conventional small business lending by California banks dropped by 502,481 loans and $39.7 billion just between 2007 and 2008. SBA 7(a) loans to California businesses dropped by 10,186 loans amounting to $1.2 billion between 2007 and 2009. This is shown in the charts below. In addition, while overall SBA 7(a) lending dropped by 70 percent in this period, lending to minority-owned businesses dropped even further. For example, lending to Latino-owned businesses sank 82 percent.





With the ongoing recession, estimating the reasonable demand for small business loans is not straightforward. However, it is clear that there is a much greater demand for credit than is being met by banks which are dramatically under-responding to small business credit need due to their own overreactions to the economy and those of their regulators. In addition, the economic crisis is placing a greater burden on Main Street creating a dramatic need for technical assistance in business operations.

- CRC projects that the level of small business credit demand is somewhere between the $1.2 billion drop in California SBA 7(a) lending (2007-2009) and the estimated $12.6 billion gap in conventional lending in the same period (double the drop in 2007-2008 lending).
- There were 10,186 fewer SBA 7(a) loans done between 2007 and 2009. There were 502,481 fewer conventional small business loans done between 2007 and 2008. It is likely that every one of these businesses needs technical assistance.

The agencies need to revise the data collected on small businesses to reflect the current array of businesses and stimulate growth of small and micro businesses that employ more than half of all workers.

- It is positive that under the *Dodd-Frank Bill of 2010* lenders will be required to report race and gender of borrowers of small business loans, the census tract location of the business, action taken with respect to the application (approved or rejected), and revenue of the business. The agencies should immediately implement these data collection requirements.
- Data now collected looks only at businesses by revenue for those with annual revenue of $1million or less annually. A huge portion of minority- and women-owned businesses have revenues of $500,000 or less annually and this data should be separately collected. Data should also be collected for loans less than $250,000 and between $251,00 and $500,000 to businesses with revenues of $1 million or less annually.
- Data for size of loans is now collected for loans less than $100,000, between $100,000 and $250,000, and greater than $250,000. Data on loans between $250,000 and $500,000 for all businesses should also be collected.
- CRA examinations should compare overall small business lending to the proportion of lending to small, women-owned and minority-owned businesses in low-income neighborhoods as well as the overall amount of lending. The question is whether it is proportional between lending and existing businesses.
- Data should also be collected that shows the annual percentage rate (APR) of loans made.
- Data should be collected that distinguishes between term and revolving debt as well as interest rates.

One of the critical issues for small, minority-owned and women-owned businesses is the importance of business advisory services. These services may be provided to help a business keep from needing to go deeper in debt by making their human resources or marketing or other efforts more efficient. They may also be deployed by lenders to help borrowers stay on time with their debt repayment.

<u>Consumer lending evaluation and data</u>

There are a number of critical issues with consumer lending for low-income people and people of color.

- Equity: There need to be products that work for low-income people and people of color as well as middle income people. The evaluation should compare the proportion of low income people getting consumer loans with the proportion of low income people in the population overall.
- Product Type: Consumer loans also need to be scrutinized and data collected on products, appropriateness and pricing.
- Predatory Lending: Banks that charge customers extremely high interest rates for payday loan products or similar products should receive negative evaluations from examiners.
- Data: Data should be collected on the type of consumer lending by borrower ethnicity, gender and income as well as census tract.

Access to banking services

As financial institutions have grown, their responsiveness to diverse communities has decreased dramatically. The product choices available for communities have grown dramatically fewer. This is the opposite of the goals of CRA for fair banking services. The service test seems to have gotten little attention from regulators. It must get increased attention now as banks increasing raise prices for services and people are often pushed to predatory financial institutions.

There are a number of critical issues with access to banking services by low-income people and people of color.

- Branch Locations: Branch locations should be proportional across the income spectrum of neighborhoods. In other words, there should be the same proportion of branches in low-income census tracts and tracts of color, as well as the proportion of all census tracts.
- Products: Services should be equally extended to all customers. The product that works best for low-income people or people of color should not have a large minimum deposit requirement or high cost fees attached to it.

Community Development

It occasionally appears from performance evaluations that examiners do not fully understand community development. For example, banks appear to receive the same credit for loans for the development of multifamily housing with market rate rents if it is located in LMI census tracts as if the tenants allowed are restricted to low-income people.

Data is now collected under the Home Mortgage Disclosure Act (HMDA) on mortgage loans made for multifamily buildings by census tract. To reflect community development, data must be collected that shows which buildings have deed restriction that tenants must earn less than 50 percent of area median income (AMI), 51-80 percent AMI, and 81-120 percent AMI. In addition, data should be collected on construction loans for such properties as well as mortgage loans.

Banks too often make declarations of intent to do community development investments but set the pricing or terms in a way that will not work for community organizations. There needs to be examination of the specifics and outcomes of the investments as to their positive value for communities.

In the exams, there should be a clear distinction between community development (CD) activities and services. CD activities add shelter, businesses and employment for LMI neighborhoods.

CRA Ratings

The meaningfulness of CRA examinations has appeared to decrease in the last decade. It can perhaps be expressed most succinctly in regulators who describe satisfactory as adequate. CRC believes that satisfactory rating should represent a good job serving under-served communities, not effort that is just adequate. In the mid-1990's, there were a great many financial institutions who received less than a satisfactory rating: either needs to improve or substantial noncompliance ratings. In recent years, anything less than a "satisfactory" was as rare as the great auk. In the neighborhoods, there is no great evidence of community responsiveness from banks. It would appear that either examiners are less incisive or banks have learned how to answer regulators' questions satisfactorily without doing the work of CRA.

Financial institutions can appeal their CRA ratings. It only stands to reason that community-based organizations should have the right to do the same as a matter of course.

Public Hearings and Comment

CRC believes that there need to be public hearings on any significant bank's merger so that real community comment takes place. Significance should be relative to the impact on the communities involved. In addition, if there is significant litigation bearing on bank performance and responsiveness to low-income communities or communities of color, a hold should be place on the application. The current situation where banks are sold overnight by the FDIC has left no opportunity for the community to comment or for community involvement.

The regulatory agencies need to enact stronger and more thorough regulatory structures and examinations as identified above to meet the continuing needs and changing operations of financial institutions. The California Reinvestment Coalition greatly appreciates the regulators' future development of critical financial evaluation instruments and looks forward to increasing supervision and oversight of bank practices by your agencies.

Sincerely,

Alan Fisher
Executive Director